IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Cri. Application No. 7660 of 2005
IN
CRIMINAL APPEAL . 1082 OF 2005

Mr. A. P. Mundergi with Mr. Ganesh Gole for applicant
Mr. A. S. Gadkari APP for the State.

CORAM: B.H. MARLAPALLE
&
MRS. ROSHAN DALVI JJ.
Reserved on 28/2/06

Delivery DATE: 2/3/2006

P.C.:

1. This is an application for bail taken out by accused nos.16, 18 and 19 in Sessions case No. 79 of 2004. There were 23 accused in the said case. The accused were charged with the offences under sections 147, 148, 302, 307, 324, 323, 452, 341, 427, 504, 506, 120 B read with 149 of the IPC., Section 37(1) and (3) punishable under Section 135 of the Bombay Police Act and under

Section 25 of the Arms Act.

2. The applicants have been convicted for offences under Sections 147, 148, 302, 325, 427 read with 149 of the IPC as well as for offences under Section 37(1) and (3) punishable under Section 135 of the Bombay Police Act. They have been sentenced to imprisonment for life and to pay fine of Rs.1000/- under the judgment and order dated 27.07.05 passed by the learned Additional Sessions Judge Raigad, Alibaug. They have applied for suspension of their sentence under Section 389 of Cr. P.C.

3. We have gone through the said judgment and the evidence of 28 witnesses in support of the prosecution case. The learned Senior Advocate for the applicants has taken us through the evidence and statements of a number of witnesses of the prosecution as against the applicants. The evidence of P.W. Nos. 3, 4, 5, 7, 8 and 15 is material to consider.

4. The evidence against applicant no.2 (accused no. 18) is stated to be of the solitary witness P.W. 8. He has deposed generally about the assault on his son with iron bars, sticks and axe by various accused including applicants 1 and 2. He has deposed that he saw applicants 1 and 2 with weapons. His evidence has not been corroborated.
5. The evidence against these applicants is essentially through P.W. 2, 3, 4 and 5. These applicants were seen with weapons like knives, swords, axes and sticks and general statements about their assaults with weapons and their encircling the villagers, threatening them and damaging articles is given by these witnesses.
6. The applicants 1 & 3 have been identified by P.W. 15 but no specific role has been assigned to them despite their presence at the time of the incident.
7. Despite the evidence relating to the use of weapons, no recovery of any weapons has been

made at the instance of these accused.

8. The applicants are senior citizens over 60 years old.

9. In view of such evidence of general nature, without assigning any specific role with specific weapons to them, a case for release of these applicants on bail by suspension of the sentence under Section 389 of the Cr. P.C., is made out.

10. The applicants have been in custody since their arrest. The applicants shall be released on bail in a sum of Rs.10,000/- each with two sureties in the like amount. Cash bail is not granted. The applicants shall execute personal bond separately.

(MRS.ROSHAN DALVI J.) **(B.H.MARLAPALLE J.)**